

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANT: 1527 Hamilton Road LLC

OBJECTOR: Dos Perros LLC

CASE 41H-0127-R-2022

41H 26093-00

41H 26094-00

41H 122675-00

ORDER APPROVING STIPULATION

The Water Court included claims 41H 26093-00, 41H 26094-00, and 41H 122675-00 in the Preliminary Decree for the Gallatin River Basin (Basin 41H). Each of the claims is for the use of water from Reese Creek in Gallatin County. The Preliminary Decree describes claim 41H 26093-00 as a filed right to use water for irrigation use with a June 12, 1885 priority date. Claim 41H 26094-00 is described as a decreed right to use water for irrigation use with a June 1, 1864 priority date. Claim 41H 122675-00 is described as a decreed right to use water for stock water use with a June 1, 1864 priority date.

1527 Hamilton Road LLC ("Hamilton") owns the claims. Each claim received an objection from Dos Perros LLC ("Dos Perros"). Judy Neiminen filed notices of intent to appear ("NOIA"). Neiminen conditionally withdrew her NOIA on January 17, 2023.

The preliminary decree abstracts for claims 41H 26093-00 and 41H 26094-00 also include the following issue remark:

THE TIMELY FILED OBJECTION OF THE CLAIMANT WAS
AMENDED BY THE CLAIMANT TO INCLUDE POINT OF
DIVERSION AND MEANS OF DIVERSION BECAUSE THESE
ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST,
ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY

AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY
PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE
AN OBJECTION AT THE PRELIMINARY DECREE.

On January 11, 2023, Hamilton and Dos Perros filed a stipulation (“Stipulation”) to resolve Dos Perros’ objections to the claims. The Stipulation also addresses claim 41H 122672-00 which is consolidated in case 41H-0129-R-2022. As part of the Stipulation, the parties asked the Court to include the following commissioner remark on the three claims in this case:

THIS WATER RIGHT SHALL NEVER BE DIVERTED FROM A POINT
OF DIVERSION FROM PROPERTY IN SECTION 9, TOWNSHIP 1
NORTH, RANGE 5 EAST.

On January 18, 2023, the Court requested clarification as to whether points of diversion in the legal land section described in the remark should be removed from the claims. On January 31, 2023, Dos Perros confirmed that this was the parties’ intent.

DISCUSSION

The Montana Water Use Act requires the Water Court to resolve all issue remarks and objections to claims prior to including the claims in a final decree. As part of the issue remark and objection resolution process, the Water Court encourages settlements.

1. Point of diversion modifications.

The three claims in this case each are decreed with several points of diversion. The Stipulation, as clarified, proposes to reduce the number of points of diversion by eliminating the one located in Section 9, Township 1 North, Range 5 East, and including an information remark prohibiting points of diversion from being established in Section 9 in the future.

In determining whether to accept the claim modifications proposed in the settlement agreement, the Court applies Rule 17, W.R.Adj.R. *Stafford v. West Gallatin Canal Co.*, 2022 Mont. Water LEXIS 85, *2. Under Rule 17(a), settlements are subject to Water Court review and approval when they resolve issues within the Court’s jurisdiction. *See also*, § 85-2-233(5)(b), MCA. Settlement agreements set the terms under

which the parties contractually agree to resolve objections. A settlement may include a claimant's legally binding commitment to modify claims to resolve issue remarks. *In re Lee*, Case 41H-1239-R-2021; 2022 Mont. Water LEXIS 830 (Order Approving Stipulation and Closing Case). As with any settlement filed with a court, the Water Court may rely on the terms of a settlement as long as they are "not contrary to law, court rule, or public policy." *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a settlement proposes to reduce the elements of a claim, the Court may accept the proposed settlement without additional presentation of evidence. Rule 17(c), W.R.Adj.R.

The parties' settlement in this case meets these standards. The settlement proposed claim modifications resolve the objections. The number of points of diversion decrease for each claim. The remark as to future points of diversion in Section 9 poses no issue for the Water Court because it amounts to a private agreement between the parties protecting Dos Perros' property interest.

2. Issue remark resolution.

The issue remark refers to proceedings that occurred after the Water Court issued the Basin 41H Temporary Preliminary Decree ("TPD") in 1985. The Court called claims 41H 26093-00 and 41H 26094-00 in on motion and consolidated them in case 41H-149 to address self-objections and other issues. The Court approved a master's report resolving the issues. As part of resolution, the Court approved amendments to points and means of diversion. The Court ordered the issue remark be put on the claims because these two elements were not included on the TPD objection list. The remark provided the requisite notice and no one else filed objections other than the parties now in this case. The remark is resolved by the approval of the Stipulation.

ORDER

Therefore, it is ORDERED that the Stipulation is APPROVED and the point of diversion elements of claims 41H 26093-00, 41H 26094-00, and 41H 122675-00 are modified as provided in this Order. All issue remarks are removed from the claims and the objections and appearances are DISMISSED as resolved. This case is CLOSED.

A post decree abstract of the claims are included with this Order to confirm the modifications have been made in the State's water rights database.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via Electronic Mail:

Dana E. Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771
(406) 599-7424
office@riverandrangelaw.com
dana@riverandrangelaw.com
bina@riverandrangelaw.com

Colleen A. Coyle
Coyle Law Firm PLLC
PO Box 1326
141 Discovery Drive, Suite 215
Bozeman, MT 59771
(406) 570-2740
colleen@coylelawmt.com

****Last Order****

Cindy E. Younkin
Tyler MULLowney
Attorney at Law
McLean, Younkin & Willett, PLLC
2066 Stadium Dr Ste 101
Bozeman, MT 59715
(406) 582-0027
cyounkin@bozeman.legal
tMullowney@bozeman.legal
admin@bozeman.legal

****Caption and Service List Updated 2/17/23****

\\JUDGALH2OSRV\Datavol\Share\WC-BASIN FOLDERS\41H PD\41H Cases\41H-R127\41H-R127 CO 2.16.23 nr.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 26093-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: 1527 HAMILTON RD LLC
PO BOX 5241
LAGUNA BEACH, CA 92652 5241

Priority Date: JUNE 12, 1885

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER

***Flow Rate:** 1.23 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 150.50

***Source Name:** REESE CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	8	1N	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: BRIGHT DITCH

2		SWSESW	8	1N	5E	GALLATIN
---	--	--------	---	----	----	----------

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: BRIGHT DITCH

3		NESENE	18	1N	5E	GALLATIN
---	--	--------	----	----	----	----------

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

THIS WATER RIGHT SHALL NEVER BE DIVERTED FROM A POINT OF DIVERSION FROM PROPERTY IN SECTION 9, TOWNSHIP 1 NORTH, RANGE 5 EAST.

Period of Use: APRIL 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	97.50		NW	17	1N	5E	GALLATIN
2	53.00		E2NE	18	1N	5E	GALLATIN

Total: 150.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

26093-00

26094-00

SPLIT CLAIM NO. 41H 30106973 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 26094-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: 1527 HAMILTON RD LLC
PO BOX 5241
LAGUNA BEACH, CA 92652 5241

Priority Date: JUNE 1, 1864

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 2.45 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 150.50

***Source Name:** REESE CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	8	1N	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: BRIGHT DITCH

2		SWSESW	8	1N	5E	GALLATIN
---	--	--------	---	----	----	----------

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: BRIGHT DITCH

3		NESENE	18	1N	5E	GALLATIN
---	--	--------	----	----	----	----------

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

THIS WATER RIGHT SHALL NEVER BE DIVERTED FROM A POINT OF DIVERSION FROM PROPERTY IN SECTION 9, TOWNSHIP 1 NORTH, RANGE 5 EAST.

Period of Use: APRIL 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	97.50		NW	17	1N	5E	GALLATIN
2	53.00		E2NE	18	1N	5E	GALLATIN

Total: 150.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

26093-00

26094-00

SPLIT CLAIM NO. 41H 30106974 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 122675-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 1527 HAMILTON RD LLC
PO BOX 5241
LAGUNA BEACH, CA 92652 5241

Priority Date: JUNE 1, 1864

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: REESE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2SWNE	18	1N	5E	GALLATIN

Period of Diversion: MAY 1 TO DECEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		S2SW	8	1N	5E	GALLATIN
---	--	------	---	----	----	----------

Period of Diversion: MAY 1 TO DECEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

THIS WATER RIGHT SHALL NEVER BE DIVERTED FROM A POINT OF DIVERSION FROM PROPERTY IN SECTION 9, TOWNSHIP 1 NORTH, RANGE 5 EAST.

Period of Use: MAY 1 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	7	1N	5E	GALLATIN
2			SESE	7	1N	5E	GALLATIN
3			SW	8	1N	5E	GALLATIN
4			NE	18	1N	5E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

122672-00

122675-00